

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MINNESOTA

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4 In re: National Hockey League  
5 Players' Concussion Injury  
6 Litigation

MDL No. 14-2551 (SRN/JSM)

7 (ALL ACTIONS)

St. Paul, Minnesota  
Courtroom 7B  
September 18, 2014  
1:00 p.m.  
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9  
10 BEFORE THE HONORABLE SUSAN RICHARD NELSON

11 UNITED STATES DISTRICT COURT JUDGE

12  
13 **INITIAL CASE MANAGEMENT HEARING**

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**Also Present:**

Bill Daly, NHL Deputy Commissioner  
Julie Grand, NHL Deputy General Counsel

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P R O C E E D I N G S

IN OPEN COURT

(Commencing at 1:02 p.m.)

THE COURT: We are here this afternoon in the matter of In re: National Hockey League Players' Concussion Injury Litigation. This is MDL number 14-2551. In some sort of organized way, let's try to make appearances, okay, and slowly for the sake of the court reporter.

And we'll begin with the Plaintiffs.

MR. ZIMMERMAN: Good afternoon, Your Honor. I'm Charles Zimmerman from the firm of Zimmerman Reed in Minneapolis, here for the Plaintiffs.

MR. GRYGIEL: Good afternoon, Your Honor. I'm Steve Grygiel from the Baltimore law firm of Silverman, Thompson on behalf of the Plaintiff.

THE COURT: Very good.

MR. DAVIDSON: Good afternoon, Judge. My name is Stuart Davidson from the Robbins, Geller, Rudman & Dowd law firm, Boca Raton, Florida.

THE COURT: Very good.

MR. GUDMUNDSON: Good afternoon, Your Honor. Brian Gudmundson, Zimmerman Reed, on behalf of Plaintiffs.

MR. DEARMAN: Mark Dearman, D-e-a-r-m-a-n, Robbins, Geller, Rudman & Dowd law firm, Boca Raton.

THE COURT: Take a look at your mics and make sure

1 the green light is on.

2 MR. DEARMAN: It is now. Thanks.

3 THE COURT: Okay.

4 MR. LEVINE: Good morning. David Levine of The  
5 Levine Law Firm in Fort Lauderdale, Florida for the  
6 Plaintiffs.

7 MR. SCOTT ANDRESON: Good afternoon, Judge. Scott  
8 Andreson, Bassford Remele, Minneapolis. Mr. Remele sends his  
9 apologies and his regards that he's out of the country and  
10 can't be here today.

11 MR. CASHMAN: Good afternoon, Your Honor.  
12 Michael R. Cashman from the Zelle Hoffman Voelbel & Mason law  
13 firm here in Minneapolis.

14 THE COURT: Very good.

15 MR. KLOBUCAR: Good afternoon, Judge. Jeff Klobucar  
16 with the Bassford Remele firm on behalf of Plaintiff.

17 THE COURT: Very good.

18 MR. PENNY: Good afternoon. Brian Penny from the  
19 law firm of Goldman Scarlato & Penny outside of Philadelphia.

20 MS. GLUEK: Karla Gluek from the law firm Gustafson  
21 Gluek, Minneapolis.

22 MS. GEOFFRION: Katelyn Geoffrion from Corboy &  
23 Demetrio in Chicago.

24 MR. STUCKEY: Shawn Stuckey, Zelle Hoffman, here in  
25 Minneapolis.

1 MR. JAMES ANDERSON: Good afternoon, Your Honor.  
2 James Anderson from Heins Mills & Olson, also in Minneapolis.

3 MR. BLEICHNER: Good afternoon, Your Honor. Bryan  
4 Bleichner from Chestnut Cambronne.

5 MR. BYRNE: Good afternoon, Your Honor. Tom Byrne  
6 from Namanny, Byrne & Owens in California for the Plaintiffs.

7 MR. OWENS: Good afternoon. Mel Owens, Namanny,  
8 Byrne & Owens in California.

9 MR. ROBINOVITCH: Hart Robinovitch also from  
10 Zimmerman Reed here in Minneapolis.

11 PLAYER REED LARSON: Judge, Reed Larson, Detroit Red  
12 Wings, Boston Bruins from years 1976 to 1990.

13 THE COURT: Welcome.

14 PLAYER TOM YOUNGHANS: Hello. Tom Younghans with  
15 the Minnesota North Stars, New York Rangers, '76 to '82.

16 PLAYER JEFF PARKER: Good afternoon. Jeff Parker,  
17 played in Buffalo from '86 to '90.

18 PLAYER BRAD MAXWELL: Your Honor, Brad Maxwell, 1977  
19 to '87 with the North Stars.

20 PLAYER BOB PARADISE: Good afternoon, Your Honor.  
21 Bob Paradise, Pittsburgh Penguins, 1969 to '79.

22 THE COURT: Very good. We'll turn it to the defense  
23 then.

24 MR. CONNOLLY: Good afternoon, Your Honor. Dan  
25 Connolly on behalf of the National Hockey League. I'd like to



1 introduce Bill Daly, the Deputy Commissioner, is here with us  
2 today --

3 THE COURT: Pleasure.

4 MR. CONNOLLY: -- and Julie Grand, the Deputy  
5 General Counsel is here today.

6 THE COURT: Very good.

7 MR. CONNOLLY: In addition, Your Honor, from the  
8 Skadden Arps firm, Mr. John Beisner.

9 MR. BEISNER: Good afternoon, Your Honor.

10 THE COURT: Good afternoon.

11 MR. CONNOLLY: Shepard Goldfein.

12 MR. GOLDFEIN: Good afternoon, Your Honor.

13 THE COURT: Good afternoon.

14 MR. CONNOLLY: And James Keyte.

15 MR. KEYTE: Good afternoon, Your Honor.

16 THE COURT: Good afternoon.

17 MR. CONNOLLY: In addition, Mr. Joseph Baumgarten  
18 from the Proskauer Rose firm.

19 THE COURT: Good afternoon.

20 MR. CONNOLLY: And finally, Your Honor, colleagues  
21 of mine from Faegre Baker Daniels, Joe Price.

22 MR. PRICE: Good afternoon, Your Honor.

23 THE COURT: Good afternoon.

24 MR. CONNOLLY: Linda Svitak.

25 MS. SVITAK: Good afternoon, Your Honor.

1 THE COURT: Good afternoon.

2 MR. CONNOLLY: And Aaron Van Oort.

3 MR. VAN OORT: Good afternoon.

4 THE COURT: Good afternoon.

5 MR. CONNOLLY: Thank you, Your Honor.

6 THE COURT: Thank you, Mr. Connolly. Very good.

7 Well, you know, it is really an honor for me to be  
8 asked to preside over my first MDL and, in particular, this  
9 MDL. The subject matter is fascinating. And perhaps most  
10 importantly, I have the privilege of working with such  
11 incredibly talented lawyers. With such a deep bench on both  
12 sides, I fully expect that the issues will be well-articulated  
13 and argued vigorously and briefed for my benefit.

14 MDLs are designed, of course, to be an efficient and  
15 cost-effective and speedy way of completing discovery on a  
16 volume of cases. With a single master administrative  
17 Complaint in this case, I believe that we will be able to move  
18 expeditiously. But, as all of you know, over the last number  
19 of years there's been some debate about whether the MDL has  
20 served its purpose. And those who criticize it cite to  
21 statistics about bogged-down discovery and backed-up motion  
22 and years of work before these cases get returned to transfer  
23 or courts.

24 I've been a transfer or court getting a case after  
25 six, eight years from an MDL. And one has to wonder whether

1 it's served its intended purpose. So it is my intent not to  
2 allow that to occur. To be fair to both sides and for the  
3 benefit of all parties to this case, it is my intent to  
4 actively enforce deadlines, meet with Counsel every month  
5 either in person or telephonically, and to be very diligent in  
6 ruling on motions expeditiously in this case. So, in turn, I  
7 expect that Counsel will exercise similar diligence and bring  
8 your considerable talents and resources to bear on completing  
9 tasks in a timely way.

10 Now, I just wanted to mention that this morning we  
11 received notice of a seventh case transferred to this MDL. I  
12 presume everyone has gotten notice of that, and I'm going to  
13 probably mispronounce it, but I'm going to say *Populok* matter  
14 that was filed here in the District either last night or this  
15 morning. And I have reviewed the Plaintiffs' motion for  
16 approval of its proposed leadership structure, and I've  
17 reviewed all of the exhibits in support of that motion. And I  
18 will permit brief argument on that motion today, but I'm  
19 prepared to rule so we can move forward with a good leadership  
20 structure for the Plaintiffs.

21 So, with those preliminary remarks, I'm going to  
22 ask, it looks like perhaps Mr. Zimmerman, to make some  
23 preliminary remarks on behalf of the Plaintiffs.

24 MR. ZIMMERMAN: May it please the Court and Counsel.  
25 It's a privilege, as well, to be here and to carry the

1 enormous burdens and privilege of being counsel for retired  
2 players in this important matter. I don't take that lightly,  
3 and I think the Court knows that this is going to be important  
4 to all counsel on both sides. And we very much look forward  
5 to the wisdom of this Court and the leadership of this Court  
6 in guiding us through the many adventures we're going to be on  
7 together.

8 In doing that, we have tried to put together what  
9 would be a consensual and proposed structure which, in my  
10 view, is always the best way to do it. I don't know how the  
11 Court feels about it, I've not discussed the proposed  
12 structure with the Court, but we have met and conferred and  
13 worked together to come up with what we thought was the most  
14 appropriate way to handle the Plaintiffs' side of the case.  
15 We have met and conferred yesterday in my offices for  
16 approximately three hours, and we all had dinner last night.

17 And I'm here to say that there is no disagreement,  
18 and there's complete agreement on the proposal that is before  
19 Your Honor. If you have any questions about it, I would be  
20 happy to answer them. We are looking for three co-lead  
21 counsel; a liaison counsel, which would be the Bassford Remele  
22 firm; and an executive, a very strong Executive Committee. In  
23 speaking with John Beisner several times over the past several  
24 weeks, we've sort of tentatively agreed, subject to his  
25 consent and his partners' consent and your consent, that I

1 would sort of be the point person for initial contact simply  
2 because I'm here, I have a phone number that's easy to  
3 remember, and (laughter) --

4 THE COURT: Should I ask them whether they remember  
5 your phone number?

6 MR. ZIMMERMAN: It's on John's phone --

7 MR. BEISNER: It's on speed dial, Your Honor.

8 MR. ZIMMERMAN: And I answer that phone, actually,  
9 so that's even better. But it means nothing. I'm not asking  
10 for any additional labels. It's just that John had asked me  
11 last night when we spoke, and -- if there was just one person  
12 he could start conversations with. And with the consent of  
13 the Court and with the consent of all Counsel, I guess that  
14 will be me.

15 Other than that, Your Honor, if you have any  
16 questions about any of the curriculum vitae or the  
17 qualifications, I'm happy to answer it. Or if any of the  
18 counsel want to make any additional comment, I'm happy to let  
19 them do so. I have complete confidence in all of the people  
20 we have put forward. Many of them, if not every one of them,  
21 I've worked with in the past. And I believe them to be  
22 extraordinarily qualified and extraordinarily committed and  
23 extraordinarily competent.

24 We will talk later about timekeeping and reporting.  
25 I don't know if this is -- that's not the time to do it, but

1 we have -- we will be very diligent about that, as well.

2 THE COURT: Thank you, Mr. Zimmerman.

3 Is there anyone else from the Plaintiffs' side who  
4 wishes to be heard, either to agree or disagree with  
5 Mr. Zimmerman's comments?

6 **(None indicated.)**

7 Very good. Then we'll turn it to the defense.

8 Mr. Beisner.

9 MR. BEISNER: Thank you, Your Honor. Just a very  
10 brief comment since the appointment of Plaintiffs' counsel in  
11 this case, I think, is probably the area in which Defendants  
12 most assuredly have the least standing. But I did want to  
13 echo Mr. Zimmerman's statement. It's an honor for all of us  
14 to be here before you as part of this proceeding. I would  
15 note when we talk about being on speed dial, I was not being  
16 facetious about that.

17 Many of the counsel, we've been on opposite sides  
18 but have worked together with each other in other MDL  
19 proceedings, I think we've done so effectively. That doesn't  
20 mean we won't be presenting you with disagreements on issues  
21 from time to time, and I'm sure you will expect that to  
22 happen. But we do understand that in an MDL proceeding like  
23 this, we do have an obligation to all of our clients to keep  
24 this moving along. These proceedings, as you noted at the  
25 outset, do have some potential for lagging just because of the

1 large number of individuals and issues that are involved. And  
2 so the lawyers need to be at their -- at the top of their game  
3 in order to make all of this work.

4 I just wanted to make one clarification. I did  
5 speak with Mr. Zimmerman last night with respect to the  
6 structure, and I think what you mentioned takes care of it.  
7 But the Plaintiffs' proposal is, I won't say unique, but it's  
8 a little unusual in that it designates three firms as opposed  
9 to individual counsel with lead responsibility. I just wanted  
10 to be sure that there was an understanding among the Court and  
11 Plaintiffs' counsel that if we need, on the defense side, to  
12 call somebody, that we can get a binding response from  
13 someone. As long as we have an understanding, I don't want to  
14 get in the way of the motion in any way, but I do think  
15 there's a need to be sure that we're calling the right person  
16 who will then do whatever your management structure calls for  
17 to make sure you have a consensus. And I think we had an  
18 understanding, but just wanted to make sure that was on the  
19 record.

20 So with that, Your Honor, that's all we have. Thank  
21 you very much.

22 THE COURT: Thank you. And I presume,  
23 Mr. Zimmerman, that you'll talk to Mr. Beisner about who at  
24 each of the three main firms should be the primary contact.

25 MR. ZIMMERMAN: Absolutely, Your Honor. Yeah.

1 THE COURT: Okay. Very good.

2 All right, then, that motion will be granted, and I  
3 will issue an order today.

4 Now, I tried to take the submissions and make them  
5 call us with the proposed court conferences, and it wasn't  
6 quite working. And so I've come up with a preliminary  
7 proposed schedule. I am open to your thoughts and suggestions  
8 about any of these dates, about the order in which we conduct  
9 business. But I wanted to put something down on paper so that  
10 we could have some place to start.

11 I know that originally, I believe, that submissions  
12 called for the Plaintiff to do their Master Consolidated  
13 Complaint by November 3rd. If that's necessary, that's  
14 necessary. It kind of throws off the dates of the holidays,  
15 frankly, for me, but -- and I think it postpones things  
16 unnecessarily. I'm hoping with the time that everyone's had  
17 that these deadlines aren't too tight, but I suspect I will  
18 hear from you now.

19 Mr. Zimmerman.

20 MR. ZIMMERMAN: Your Honor, on the proposed filing  
21 of the Master Consolidated Complaint, we're good with that  
22 date. We didn't look at it in terms of the holidays in the  
23 same way that the Court may have, but it's fine. We can  
24 adjust.

25 But I think there is another question that we put



1 into our papers differently and that, I think, Counsel and I  
2 would like to discuss with the Court regarding the dates and  
3 the commencement of discovery.

4 THE COURT: Okay.

5 MR. ZIMMERMAN: John and I -- and I hope it's okay  
6 if I call him "John," although "Bucky" is not a great name to  
7 be calling people in Federal Court, but it's what I got.

8 But John and I have been talking about dates and  
9 trying to coordinate dates, and we each came up with our  
10 proposals. But the gravamen of where we were coming from,  
11 Your Honor, was we'd like to have a little bit of time, not a  
12 lot, but just a little bit, where we could actually sit down  
13 together, Defendant and Plaintiff, representatives of each,  
14 and try and hammer out dates that really are consistent with  
15 concerns that we may have that the Court may not have  
16 addressed.

17 THE COURT: Sure.

18 MR. ZIMMERMAN: And the reason for that was nobody  
19 wants to give any ground with regard to, should there be a  
20 stay of discovery, shouldn't there be a stay of discovery,  
21 when does discovery start? But John and I said, let's try and  
22 see what we can work out. And if we have a disagreement about  
23 it, we can bring it to Your Honor promptly. But could we have  
24 the opportunity to talk about it amongst ourselves?

25 And if I put this in the wrong context, you'll

1 correct me --

2 THE COURT: And if I could interrupt one second,  
3 what period of time are you looking at to have that  
4 discussion?

5 MR. ZIMMERMAN: Within ten days or two weeks?

6 MR. BEISNER: Yeah, Your Honor, I really think, if I  
7 may, I think the schedule that you have proposed here allows  
8 us to do that because we're going to be getting, under this  
9 schedule -- which I understand Mr. Zimmerman says is okay --  
10 the Master Consolidated Complaint on October 18th, and then  
11 there will be a status conference with the Court. We may have  
12 some issues to raise at that point, after we've seen the  
13 Complaint. But then we go into the negotiation of a proposed  
14 case management order, which I assume Bucky will be dealing  
15 with discovery and other issues. And this is really, I think,  
16 Your Honor, what this sets out is the sort of time period that  
17 we had in mind for doing that.

18 So, I think from Defendant's perspective, this is  
19 consistent with what we had in mind. It moves it along a  
20 little more quickly. We're happy to do that. But I think  
21 this would give us the opportunity to have the conversations  
22 about that.

23 MR. ZIMMERMAN: Yeah, and I kind of missed the word  
24 here, "negotiated" proposed order, and now I see it and John  
25 has pointed that out to me. We just wanted that opportunity

1 to kind of --

2 THE COURT: Of course, yes.

3 MR. ZIMMERMAN: -- put our heads together because I  
4 think it's best when we have that opportunity because we're  
5 coming from places that we have constituent groups, too, to  
6 deal with.

7 THE COURT: Sure. Sure. So, am I hearing both  
8 sides are comfortable with the filing of the Master  
9 Consolidated Complaint on or before October 18th; a status  
10 conference on November 6th at 2:00 to deal with any issues at  
11 that time; but that you will have at this 26(f) conference on  
12 or before November 18th. That's a big ticket item. There's a  
13 lot to discuss, so you'll need to decide how you're going to  
14 approach that. Perhaps submit your views in advance of it,  
15 perhaps even have a pre-status conference meeting between the  
16 two of you. However you want to approach it. But my hope is  
17 that early on we pay detailed attention to protocols around  
18 electronic discovery, that we have a good protective order in  
19 place, that we have in mind the timing on class certification,  
20 and that we have a good discussion about what role mediation  
21 plays.

22 MR. BEISNER: Your Honor, I think that this approach  
23 will work fine. I think it may mean that we'll need to start  
24 having some discussions even before the status conference on  
25 November 6th.

1 THE COURT: I would think so, yes.

2 MR. BEISNER: And I think what's worked well and  
3 what we talked about briefly at some point is on most of  
4 those, these issues, assuming they're timely, I think we can  
5 present proposed orders to the Court, case management order  
6 and so on.

7 THE COURT: Sure.

8 MR. BEISNER: What we've done in other cases is lay  
9 out the agreement, and then there may be a little discussion  
10 on the side saying, Plaintiffs want this date, Defendants want  
11 that date, or whatever. And then when we convene to discuss  
12 that -- but so that there's a master document we're working  
13 with on each of these and the Court can find the right ground  
14 with respect to that. But I think -- it's a lot to do, but I  
15 think we're up to the task.

16 MR. ZIMMERMAN: Yes. And I think we can, and I was  
17 even being more ambitious, but I think the November dates are  
18 fine. The Court has scheduled a time for the November 6th  
19 status, and then the November 8th final deadline for the  
20 proposals. That's fine.

21 The only thing I might add, Your Honor -- and we  
22 don't need to decide it now -- but one of the things that's  
23 very important to the Plaintiffs' side on these is once we get  
24 a Master Consolidated Complaint out there that we have a short  
25 form, sort of check-off Complaint so that people who want to

1 join the lawsuit don't have to start drafting large documents  
2 and filing large documents; they just -- they want to have a  
3 short form Complaint. So, we can either put that on our  
4 agenda for November, or we can just plant that seed with Your  
5 Honor that a short form proposed Complaint, maybe we'll file  
6 it with the Amended Consolidated Complaint as pro forma --

7 THE COURT: I would think that would be appropriate,  
8 and then if the defense has a response, they'll have an  
9 opportunity to make that response.

10 MR. ZIMMERMAN: Good. With that said, Your Honor, I  
11 think we're copasetic on the dates and the process for the  
12 Rule 26 dates.

13 THE COURT: And, you know, really all the dates  
14 after November 18th are dependent on your meeting. Those are  
15 just some proposals.

16 MR. ZIMMERMAN: Right. They're not cast in --

17 THE COURT: They're not etched in any stone, yes.

18 MR. ZIMMERMAN: -- stone or concrete. I never know  
19 which is which.

20 THE COURT: Except that what I'm hoping we -- is  
21 sort of etched in stone, and I should ask Mr. Beisner now,  
22 whether the November 18th date makes sense for Rule 12  
23 motions.

24 MR. BEISNER: I think, Your Honor, there may be need  
25 for a little bit more time, but I think that time range is

1 probably fine. And perhaps it would be best for us to see the  
2 Master Consolidated Complaint and then at the November 6  
3 status conference if we want to propose something a little  
4 different on that, we can do so at that time.

5 THE COURT: Okay. And the other point, I think, is  
6 I have in mind that some discovery will proceed. And you can  
7 see from the schedule, shortly before discovery is -- some  
8 discovery will proceed shortly before I rule on the Rule 12  
9 motions. I think that's pretty standard. So, that's the  
10 Court's wishes on that. So when you have those discussions,  
11 keep that in mind.

12 MR. ZIMMERMAN: I don't want to interrupt, but one  
13 of the things that we -- we sort of have a little bit of a  
14 roadmap from another case involving football. And we know  
15 that preemption is going to be a very big issue, and we also  
16 know that there are some specific fact inquiries that have to  
17 be made in order to properly face that. And so we don't --  
18 we're not asking the Court to decide it now, you've given your  
19 introductory remarks. And I know John and I have talked about  
20 this offline, and he knows where I'm coming from on this. I  
21 know where he's coming from on this.

22 Hopefully we can work it out. But we may have to  
23 come before Your Honor and say, listen, we need some limited  
24 factual inquiries now before we have to face the 12 motion.  
25 And I just want the Court to know that I'm not walking away

1 from that potential necessity.

2 THE COURT: Okay. All right. And in terms of  
3 briefing for motions, I think the default position is going to  
4 be the Federal Rules, so I'm going to need a reason why we  
5 need extra time. Okay? So -- or take --

6 MR. ZIMMERMAN: For the responses and the briefing?

7 THE COURT: For the -- yeah, briefing, for any  
8 dispositive or non-dispositive motion.

9 MR. BEISNER: Okay.

10 THE COURT: All right. Very good.

11 Anything else about the preliminary scheduling  
12 issues that you want to address at this point before our  
13 November 6th conference?

14 MR. BEISNER: Not for the Defendants, Your Honor.

15 THE COURT: Okay. All right. Very good.

16 Let's talk about the rules for status conferences.  
17 It would be my preference, but I'd be interested in your  
18 practice or your thoughts, that the parties meet and confer at  
19 least two weeks before a status conference and create a  
20 proposed agenda for that status conference and then share it  
21 with the Court at least ten days before the status conference.  
22 And decide when you meet and confer -- sometimes there are  
23 going to be issues that you can prepare simultaneous  
24 submissions to the Court with the agenda; sometimes there are  
25 going to be issues where it makes more sense for somebody

1 who's making the request to go first with the submission and  
2 for there to be a reply. I'll let you discuss how that should  
3 be provided to the Court, but give me a week at least before  
4 the status conference so I am really up to speed on what the  
5 issues are.

6 So, again, two weeks for the meet and confer, ten  
7 days for the agenda, and submissions unless you agree that  
8 there should be an initial submission and a reply. And you'll  
9 tell me then you've agreed on that and what the schedule is  
10 for that. If the parties agree that the conference should be  
11 held telephonically -- and I appreciate certainly the  
12 cost-effectiveness of doing that -- you can submit a joint  
13 agreement, stipulation that that will work.

14 I think there are conferences that we can probably  
15 hold telephonically and conferences we can't. When we hold a  
16 conference telephonically with a group like this, for the sake  
17 of the court reporter -- remember, she can't see you, so  
18 please always state your name before you say anything at all  
19 on the telephone. Okay? That's my biggest problem. People  
20 get into heated battles and she has no idea who's talking. So  
21 make sure you do that.

22 Anything else about rules for status conferences?

23 MR. ZIMMERMAN: I just have -- Charles Zimmerman.

24 In these kinds of cases, where they have major  
25 impact on lots of people, I have a strong preference



1 personally for in-person meetings of counsel. I know the  
2 Court indicated that at times in person and at times  
3 telephonic. And perhaps once the Court sees the agenda, you  
4 can advise -- you can advise us. But is it safe to assume  
5 presumptively we will be in person and unless the Court tells  
6 us other, or directs us otherwise?

7 THE COURT: I think that's fair, but you might  
8 consult with your Florida counsel about their view on that  
9 subject.

10 MR. ZIMMERMAN: They said February, March are their  
11 favorite times (laughter).

12 THE COURT: They might disagree. They might think  
13 the telephone is just fine.

14 MR. ZIMMERMAN: Delta Airlines wants us in person.

15 THE COURT: Okay. Yep.

16 I've listed, I think the defense had suggested  
17 Thursdays and the Plaintiffs, Wednesdays. Thursdays works  
18 better for me, so I have included Thursdays. Not every  
19 Thursday that you proposed worked, and a majority of the  
20 Thursdays I'm already set for trial. That's why we have 2:00  
21 hearings sometime because I will have the jury stay and then  
22 take a late lunch and they'll go for the day and then we'll  
23 have a conference. So, I'd like to hear well in advance if  
24 one of these dates doesn't work for the sake of everybody's  
25 calendar. Please don't tell me shortly in advance, if you can

1       avoid it.

2                   Anything about the timing of the settlement -- of  
3       the status conferences?

4                   MR. ZIMMERMAN: I don't know what September 3rd is,  
5       how close that is to Labor Day. Um --

6                   THE COURT: It's the Thursday before, I believe.

7                   MR. ZIMMERMAN: Okay. I just didn't -- if it's  
8       close in time, travel might be tough. But I don't see any  
9       other things that conflict with known holidays. I may have to  
10      check the Jewish calendar again. I don't know.

11                  MR. BEISNER: Let me make sure, April 9th is  
12      Passover, so --

13                  MR. ZIMMERMAN: There you go.

14                  THE COURT: So April 9th we'll have to re --

15                  MR. ZIMMERMAN: It takes the non-Jewish person to  
16      tell the Jewish person. It's my wife's job.

17                  MR. BEISNER: For the record, somebody gave me a  
18      hint. Okay.

19                  MR. ZIMMERMAN: Is that Joe? (Laughter.)

20                  THE COURT: Okay. Let's look at the month of April  
21      here. I don't have it here. Perhaps in a minute my calendar  
22      clerk will give us a different date, perhaps the next  
23      Thursday.

24                  COURTROOM DEPUTY: The next Thursday would be the  
25      16th.

1 THE COURT: Does the 16th work for everybody, 2:00  
2 because I'm in trial. So, 2:00, April 16th at 2:00 p.m. All  
3 right.

4 Now, there may come a time when in between status  
5 conferences it would be really helpful if the Court gave you  
6 some guidance on a particular deposition or particular expert  
7 or something. I want you to feel free to make a request for  
8 that kind of telephone conference call in between status  
9 conferences when it would really make a difference to have  
10 that issue decided before the next status conference. Please  
11 feel free to do that. Again, though, you need to give me a  
12 little warning, so try to schedule that in advance.

13 MR. ZIMMERMAN: May I inquire on that, Your Honor?

14 THE COURT: Yes.

15 MR. ZIMMERMAN: What is the process for that? Do we  
16 call your chambers? Is there a particular clerk or calendar  
17 --

18 THE COURT: Susan Del Monte is my scheduling clerk,  
19 and she would be handling that for you.

20 MR. ZIMMERMAN: Okay. Thank you.

21 THE COURT: And she's at the main chambers number.

22 MR. ZIMMERMAN: Thank you.

23 THE COURT: Okay. Okay.

24 Let's talk about mediation for a moment. Has there  
25 been any discussion about whether the parties want to consider

1 proposing mediators or -- I'm sure at your meet and confer,  
2 you'll talk at length about that, at the 26(f) conference.  
3 But I wondered if even now there's been any discussion on that  
4 subject.

5 MR. ZIMMERMAN: Your Honor, from the  
6 Plaintiffs' side, there has been no discussion of any kind  
7 with regard to that. And perhaps it is something we can take  
8 up at the 26 conference, but there have been no overtures  
9 either way, and we have not had any discussions about that.

10 MR. BEISNER: Agreed, Your Honor. We've had no  
11 conversations on that subject.

12 THE COURT: Okay. My experience is that mediations  
13 are most successful when you find the sweet spot for them.  
14 So, I'm hoping that you'll all be cognizant of when that might  
15 be. And oftentimes that's after there's been some discovery  
16 but before there's been too much discovery. I don't need to  
17 tell you that what costs money in these cases is electronic  
18 discovery and experts. And so if there's a way to address  
19 seriously the possibility of the resolution of the case before  
20 that time, I encourage you to do that and to propose a  
21 mediator or mediators or method of selecting a mediator that  
22 works for both sides.

23 Mr. Zimmerman, do you wish to be heard on time and  
24 expense reporting?

25 MR. ZIMMERMAN: I think if I might, Your Honor.

1 THE COURT: Yes.

2 MR. ZIMMERMAN: It's clear to me that the trends in  
3 MDLs and in Federal Courts is to have ongoing and regular  
4 management of time and expense reporting, especially on the  
5 Plaintiffs' side, and we think it should be on the defense  
6 side, too. I know that Judge Magnuson in the recent *Target*  
7 MDL has required both sides to do *in camera* reporting on a  
8 monthly basis of time and expenditures.

9 It's not fun. I'm sure it's not great reading for  
10 the Court. But it is the best way that we can keep a handle  
11 on how fast and furious the time is being expended, how the  
12 Court can see if anything is perhaps not working according to  
13 the way it should work, and for leadership to have a handle on  
14 the work that's being done by others that is either authorized  
15 or not authorized so we can control it, because the last thing  
16 we want to do is three years from now, perhaps we have an end  
17 result that everyone's happy with and we have some kind of a  
18 dispute over what time was authorized and what time should  
19 have not been spent and read-and-review time is not agreeable  
20 or not -- or is agreeable. You know the issues. And I want  
21 to take control, if I could, of the -- of that requirement and  
22 that management at the front end. And with the help of the  
23 Court, look at it in a realistic way so it doesn't ever become  
24 a problem for anybody.

25 With regard to Defendants, the Court will have to

1 decide how and when you want to manage that. It's not for me  
2 to decide. But I can refer you only to what Senior Judge  
3 Magnuson did in the *Target* case and sort of leave it at that.  
4 But --

5 THE COURT: So your proposal is for, at least on the  
6 Plaintiffs' side, monthly *in camera* reporting?

7 MR. ZIMMERMAN: Correct. And sort of on a  
8 summarized basis, not every work in process but detailed  
9 enough that you're comfortable with and detailed enough that  
10 you can get a good handle on things.

11 Let me just say one more thing. We would propose to  
12 you that we provide you what we would like to provide to you,  
13 and then you can say, "No, I want more and more;" or maybe, "I  
14 want less."

15 MR. DAVIDSON: Stuart Davidson, Your Honor. That's  
16 what I was going to say is, if Your Honor will allow us, we  
17 will submit a proposed order to the Court that lays out, you  
18 know, following the guidance from Judge Magnuson in the *Target*  
19 case and other courts that have done so recently. We'll  
20 submit a proposed order to Your Honor that has form -- or  
21 templates for time and expense recording. And if it meets  
22 with Your Honor's approval, then we'll have it done in stone.

23 THE COURT: The Court will allow you to do that.  
24 Why don't you do that. Is 10 days a reasonable time, or two  
25 weeks?

1 MR. DAVIDSON: Ten days is fine.

2 THE COURT: Ten days. Okay. Very good.

3 Mr. Beisner, do you wish to be heard on that?

4 MR. BEISNER: Your Honor, I know it's not always  
5 appropriate for an attorney to say, "I've not heard of that  
6 before." But I need to confer with Mr. Zimmerman on the  
7 subject of the defense reporting. That's not a concept, I  
8 have to say, I've run into before. And I'm not entirely sure  
9 of the purpose, but we will certainly give that some thought  
10 and report back to the Court on that issue.

11 THE COURT: Good. And if you could make that report  
12 within ten days, will that work for you?

13 MR. BEISNER: We'll do that, Your Honor.

14 THE COURT: Okay. Very good.

15 Okay. Now, it's anticipated that there will be an  
16 official court website that the parties may access which will  
17 have court orders, court minutes, court calendar, master  
18 service list, and the like. I think we've done that with  
19 other MDLs, at least in this District. So I am going to ask  
20 as part of your meet and confer that interim co-lead counsel  
21 meet with defense counsel and prepare a brief written summary,  
22 if you can, describing as if you were doing it for voir dire,  
23 okay, your joint understanding of the facts involved in the  
24 litigation and what the important factual and legal issues  
25 will be. And that will be called the "Introduction" on this

1 website, this joint submission from the parties.

2           Should you not be able to agree on that  
3 introduction, I'm sure you'll submit to me something with your  
4 various proposals, and I will try to come up with a nice,  
5 neutral introduction to put on the website. And I would ask  
6 that we finalize that by the next status conference, so if you  
7 would include that with your submissions, which would be ten  
8 days before that status conference. Okay.

9           Yes, Mr. Zimmerman.

10           MR. ZIMMERMAN: On that topic, it is also common --  
11 and unless the Court has an objection or even counsel has an  
12 objection -- the Plaintiffs also host a website for Plaintiffs  
13 to log into, albeit they're a current Plaintiff or prospective  
14 Plaintiff, to get information about the Plaintiffs' side of  
15 the case. It doesn't interfere at all with the official site  
16 of the Court, the MDL website, but I just want to know that  
17 there will also be, concurrently, a Plaintiff attorney, or  
18 Plaintiff counsel, or Plaintiffs' website.

19           THE COURT: Well, I will take that as a note to the  
20 Court. And if the defense has any concern about that, I'm  
21 sure they'll express it. Very good.

22           MR. ZIMMERMAN: I just didn't want there to be any  
23 confusion on that.

24           THE COURT: All right. Very good. Any other  
25 business before the Court today?



1                   **(None indicated.)**

2                   THE COURT: Well, I want to welcome everybody again.  
3 I welcome all lawyers, and I welcome the retired hockey  
4 players. It's a pleasure to make your acquaintance.  
5 Court is adjourned.

6                   **(WHEREUPON, the matter was adjourned.)**

7                   (Concluding at 1:40 p.m.)

8  
9                   \*           \*           \*           \*

10  
11                   CERTIFICATE

12  
13                   I, Heather A. Schuetz, certify that the foregoing is  
14 a correct transcript from the record of the proceedings in the  
15 above-entitled matter.

16  
17                   Certified by: s/ Heather A. Schuetz  
18                   Heather A. Schuetz, RMR, CRR, CCP  
19                   Official Court Reporter  
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